

NICOLETTI HORNIG & SWEENEY
Attorneys for Plaintiff
Wall Street Plaza
88 Pine Street, Seventh Floor
New York, New York, 10005
Telephone: (212) 220-3830
(File No.: 42-94 JFS/CR)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AGCS MARINE INSURANCE COMPANY a/s/o
WORLD IMPORT DISTRIBUTORS, INC. and
WORLD FINER FOODS, INC.,

Plaintiff,

14 Civ. 6926 (GHW)

-against-

**SECOND AMENDED
VERIFIED COMPLAINT**

M.V. COSCO NAGOYA, her engines, boilers,
etc., JASMINE SHIPPING SA, SEAFRIGO USA, INC.,
ENTREPOTS & TRANSPORTS FRIGORIFIQUES
BARBE d/b/a SEAFRIGO, ENTREPOTS ET
TRANSPORTS BARBE d/b/a SEAFRIGO and
EVERGREEN LINE A JOINT SERVICE AGREEMENT
FMC No. 011982, consisting of Evergreen Marine Corp.
(Taiwan) Ltd., Evergreen Marine (UK) Ltd.,
Italia Marittima S.p.A., Evergreen Marine
(Hong Kong) Ltd. and Evergreen Marine (Singapore)
Pte Ltd. d/b/a EVERGREEN LINE,

Defendants.

X

Plaintiff, by its attorneys, NICOLETTI HORNIG & SWEENEY alleges upon information and belief, as follows:

FIRST: All and singular the following premises are true and constitute admiralty or maritime claims within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

SECOND: At and during all the times hereinafter mentioned, Plaintiff had and now has the legal status and principal office and place of business stated in Schedule "A" and "B", hereto annexed, and by this reference made a part hereof.

THIRD: At and during all the times hereinafter mentioned, Defendants have and now have the legal status and offices and places of business stated in Schedules "A" and "B", and were and now are engaged in business as common carriers of merchandise by water for hire, and owned, operated, managed, chartered and/or otherwise controlled the M.V. COSCO NAGOYA named as common carriers of merchandise by water for hire.

FOURTH: At and during all the times hereinafter mentioned, the said vessel was and now is a general ship employed in the common carriage of merchandise by water for hire, and now is or will be during the pendency of this action, within this District and within the jurisdiction of this Honorable Court.

FIFTH: On or about the dates and the ports of shipment stated in Schedules "A" and "B", there were shipped by the shippers therein named and delivered to Defendants and the said vessel, as common carriers, the shipments described in Schedules "A" and "B" then being in good order and condition, and Defendants and the said vessel then and there accepted said shipments so shipped and delivered to them, and in consideration of certain agreed freight charges thereupon paid or agreed to be paid, agreed to transport and carry the said shipments to the ports of destination stated in Schedules "A" and "B", and there deliver the same in like good order and condition as when shipped, delivered to and received by them, to the respective consignees named in Schedules "A" and "B".

SIXTH: Thereafter, the said vessel did not arrive at the ports of destination and returned to the ports of shipments, where shipments were received, but not in like good order

and condition as when shipped, delivered to and received by them, but on the contrary, seriously injured and impaired in value by reason of the matters and things stated in Schedules "A" and "B", all in violation of Defendants' and the said vessel's obligations and duties as common carriers of merchandise by water for hire.

SEVENTH: Plaintiff is the duly subrogated insurer of the consignees and owners of the shipments described in Schedules "A" and "B" and brings this action on its own behalf and as agent or trustee on behalf of and for the interest of all parties who may be or become interested in the said shipments, as their respective interests may ultimately appear, and Plaintiff is entitled to maintain this action.

EIGHTH: By reason of the premises, Plaintiff has sustained damages, as nearly as the same can now be estimated, no part of which has been paid although duly demanded, in the sum of \$145,142.80.

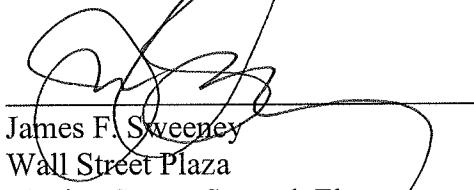
WHEREFORE, Plaintiff prays:

1. That process in due form of law may issue against Defendants citing them to appear and answer all and singular the matters aforesaid;
2. That if Defendants cannot be found within this District, then all their property within this District as shall be described in Schedules "A" and "B", be attached in the sum of \$145,142.80, interest thereon and costs, the sum sued for in this Second Amended Complaint;
3. That Judgment may be entered in favor of Plaintiff against Defendants for the amount of Plaintiff's damages together with interest and costs and the disbursements of this action;

4. That process is due form of law according to the practice of this Court in causes of admiralty and maritime claims, may issue against the M.V. COSCO NAGOYA, their engines, boilers, etc., and that all persons having or claiming any interest therein be cited to appear and answer under oath, all and singular the matters aforesaid, and that this Court will be pleased to pronounce judgment in favor of Plaintiff for its damages as aforesaid, with interest, costs and disbursements, and that the said vessels may be condemned and sold to pay therefor; and

5. That this Court will grant to Plaintiff such other and further relief as may be just and proper.

Dated: New York, New York
September 26, 2014

NICOLETTI HORNIG & SWEENEY
Attorneys for Plaintiff
By: 
James F. Sweeney
Wall Street Plaza
88 Pine Street, Seventh Floor
New York, New York, 10005
Telephone: (212) 220-3830
(File No: 42-94 JFS/CR)

SCHEDULE A

**Plaintiff's Legal Status and
Office and Place of Business:**

Plaintiff, AGCS MARINE INSURANCE COMPANY, was and now is a corporation organized and existing under and by virtue of the laws of one of the states of the United States, with an office and place of business at One Chase Manhattan Plaza, 37th Fl., New York, New York 10005.

**Defendants' Legal Status and
Office and Place of Business:**

Defendant, SEAFRIGO USA, Inc. was and now is a corporation or other business entity organized and existing under and by virtue of the laws of the State of New Jersey, with an office and place of business located at 536 Dowd Ave, Elizabeth, New Jersey 07201;

Defendant ENTREPOTS & TRANSPORTS FRIGORIFIQUES BARBE d/b/a SEAFRIGO, was and now is a corporation or other business entity organized and existing under and by virtue of foreign law, with an office and place of business located at 9, rue du Pont IV, 76600 Le Havre, France, and c/o SEAFRIGO USA, Inc. with an office and place of business located at 536 Dowd Ave, Elizabeth, New Jersey 07201;

Defendant ENTREPOTS & TRANSPORTS BARBE d/b/a SEAFRIGO, was and now is a corporation or other business entity organized and existing under and by virtue of foreign law, with an office and place of business located at 9, rue du Pont IV, 76600 Le Havre, France, and c/o SEAFRIGO USA, Inc. with an office and place of business located at 536 Dowd Ave, Elizabeth, New Jersey 07201;

Defendant, EVERGREEN LINE A JOINT SERVICE AGREEMENT FMC No. 011982, consisting of Evergreen Marine Corp. (Taiwan) Ltd., Evergreen Marine (UK) Ltd., Italia Marittima S.p.A., Evergreen Marine (Hong Kong) Ltd. and Evergreen Marine (Singapore) Pte Ltd. d/b/a EVERGREEN LINE, was and now is a corporation or other business entity organized and existing under and by virtue of foreign law, with an office and place of business located at c/o EVERGREEN SHIPPING AGENCY (AMERICA) CORP., 1 Evertrust Plz #6, Jersey City, New Jersey 07302; and,

Defendant, JASMINE SHIPPING SA was and now is a corporation or other business entity organized and existing under and by virtue of foreign law, with an office and place of business located at c/o COSCO Container Lines Co. Ltd (COSCON), COSCO Plaza, 378, Dongdaming Lu, Hongkou Qu, Shanghai, 200080, China.

Date of Shipment: December 22, 2013
Port of Shipment: Le Havre, France
Port of Destination: New York, New York
Vessel: M.V. COSCO NAGOYA
Shippers: SEAFRIGO and EVERGREEN LINE
Consignee: World Import
Shipment: Cheese
Nature: Physical Damage
Amount: \$70,601.41
NH&S File: 42-94 JFS/CR

SCHEDULE B

**Plaintiff's Legal Status and
Office and Place of Business:**

Plaintiff, AGCS MARINE INSURANCE COMPANY, was and now is a corporation organized and existing under and by virtue of the laws of one of the states of the United States, with an office and place of business at One Chase Manhattan Plaza, 37th Fl., New York, New York 10005.

**Defendants' Legal Status and
Office and Place of Business:**

Defendant, EVERGREEN LINE A JOINT SERVICE AGREEMENT FMC No. 011982, consisting of Evergreen Marine Corp. (Taiwan) Ltd., Evergreen Marine (UK) Ltd., Italia Marittima S.p.A., Evergreen Marine (Hong Kong) Ltd. and Evergreen Marine (Singapore) Pte Ltd. d/b/a EVERGREEN LINE, was and now is a corporation or other business entity organized and existing under and by virtue of foreign law, with an office and place of business located at c/o EVERGREEN SHIPPING AGENCY (AMERICA) CORP., 1 Evertrust Plz #6, Jersey City, New Jersey 07302; and,

Defendant, JASMINE SHIPPING SA was and now is a corporation or other business entity organized and existing under and by virtue of foreign law, with an office and place of business located at c/o COSCO Container Lines Co. Ltd (COSCON), COSCO Plaza, 378, Dongdaming Lu, Hongkou Qu, Shanghai, 200080, China.

Date of Shipment: December 22, 2013

Port of Shipment: Le Havre, France

Port of Destination: New York, New York

Vessel: M.V. COSCO NAGOYA

Shippers: EVERGREEN LINE

Consignee: World Finer Foods

Shipment: Jams and preserves

Nature: Physical Damage

Amount: \$74,541.39

NH&S File: 42-94 JFS/CR

VERIFICATION

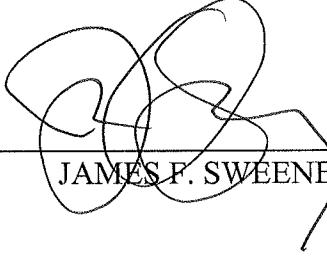
STATE OF NEW YORK)
 : SS
COUNTY OF NEW YORK)

JAMES F. SWEENEY, being duly sworn, deposes and says:

That he is an attorney admitted to practice before the Courts of this State and a member of the firm of NICOLETTI HORNIG & SWEENEY attorneys for Plaintiff herein.

That he has read the foregoing Verified Second Amended Complaint and knows the contents thereof and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters, he believes them to be true.

Deponent further says that the sources of his information and the grounds for his belief as to all matters therein stated to be alleged on information and belief, is derived from documents, records, correspondence and memoranda of Plaintiff concerning the matters set forth in the Verified Second Amended Complaint in the possession of deponent.



JAMES F. SWEENEY

Sworn to before me this
26th of September, 2014

Valerie Clune
Notary Public

VALERIE A. CLUNE
Notary Public, State of New York
No. 01CL4880479
Qualified in Queens County
Certificate Filed in New York County
Commission Expires Dec. 15, 2014